

Supreme Court, U. S.

FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. **77-1549**

C. H. JOHNSON and CLIFF WILLIAMS,
Petitioners,

v.

GENERAL MOTORS ASSEMBLY DIVISION,
GENERAL MOTORS CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Court of Appeals of Georgia

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The Petitioners, C. H. Johnson and Cliff Williams, and each of them, respectfully pray that a Writ of Certiorari issue to review the decision of the Supreme Court of the State of Georgia dated January 25, 1978 denying Petitioners' Application for Writ of Certiorari to the Court of Appeals of the State of Georgia.

OPINION BELOW

The Opinion of the Court of Appeals of Georgia appears in the Appendix to this Petition.

JURISDICTION

The Decision of the Court of Appeals of Georgia was rendered on November 22, 1977. An Application to the Supreme Court of Georgia for a Writ of Certiorari was denied January 25, 1978.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

Petitioners were sentenced under the Georgia First Offender's Act (Ga. Laws 1968, page 324) which provides for restoration of Civil Rights and Liberties upon completion of the sentence. During the pendency of the relevant criminal proceeding, they were given the option of either resigning or being fired from their positions as employees of Respondent. Petitioners were denied restoration of their positions of employment upon the basis that their resignations had been voluntary.

Does the Court's action in refusing reinstatement of Petitioners to their positions of employment where their resignations were coerced constitute a denial of equal protection of the laws as guaranteed to Petitioners by the Fourteenth Amendment to the Constitution?

STATUTORY PROVISIONS INVOLVED

Georgia First Offender's Act, Ga. Laws 1968, page 324 (Ga. Code Ann. §27-2727, et seq.), (see Appendix to the Petition).

STATEMENT OF THE CASE

(In accordance with revised Rule 21(1) of the United States Supreme Court, the record is not included with this Petition.

However, references are made to those pertinent parts of the record below in setting forth this Statement of the Case.)

Petitioners were employees of long standing with Respondent, General Motors. Petitioner, Johnson, had worked twenty-nine (29) years with Respondent. Petitioner, Williams, had worked twelve (12) years for Respondent. Both were employed as salaried foremen under contract specifying employment to be on a month to month basis. In October of 1974, Petitioners, while in the employ of Respondent, were arrested and charged with the crime of burglary. The following May, Petitioners entered a plea of nolo contendere to the felony charges of receiving stolen property and each was sentenced to pay a fine of \$1,000.00 and to serve four (4) years on probation.

Thereafter General Motors gave each the option of resigning or being fired. Petitioners were given a matter of minutes to decide whether to resign or be fired. Neither was allowed time to seek counsel on the matter. Petitioners elected to resign. (Depositions: C. H. Johnson, pages 14-16; Cliff Williams, pages 21-24). Thereafter under date of October 29, 1975, it was ordered by the Superior Court of Cobb County, Georgia, that the Petitioners be discharged under the Georgia First Offender's Act (relevant provisions appear in the Appendix to this Petition). Each was discharged without any adjudication of guilt and exonerated of any criminal purpose and intent and all civil rights were restored. (Order, James L. Bullard, Judge, Cobb Superior Court).

In October 1976, Petitioners brought their complaints against Respondent for wrongful discharge and seeking lost wages and reinstatement to their previous employment. Petitioners alleged that the Georgia First Offender's Act provided for eradication of all criminal charges, and that their discharges from employment were without cause. Thereafter, Respondent brought its Motion for Summary Judgment, which was granted on the sole

basis that Petitioners had been given a choice between resigning and being fired and that each chose to resign. (Order and Final Judgment, Clarence Peeler, Jr., Judge, Superior Court of De-Kalb County).

Upon Appeal to the Court of Appeals of Georgia, the lower court's decision was affirmed. The Court of Appeals based its decision on the premise that resignation under pressure did not amount to a discharge of employment. Further, the Court of Appeals observed that Respondent was justified in terms of law to terminate the employment since the provisions of the First Offender's Act did not eliminate the facts of arrest and sentencing. An Application for a Writ of Certiorari to the Supreme Court of Georgia dated January 4, 1978, was denied January 25, 1978.

REASONS FOR GRANTING THE WRIT

1. The Action of the Lower Court in Refusing to Reinstate the Petitioners to Their Employment Positions Where Their Resignations Were Coerced, Notwithstanding the Provisions of the Georgia First Offender's Act, Constitutes a Denial of Equal Protection of the Law and Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

A virtually unlimited number of cases emanating from the Supreme Court of the United States has espoused the principle that the Constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions. See *E. G. Hartford Steam Boiler Inspection and Insurance Company v. Harrison*, 301 U.S. 459; *Old Dearborn Distributing Company v. Seagram Distillers Corporation*, 299 U.S. 183; *Colgate v. Harvey*, 296 U.S. 404.

It has been said that the guaranty of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances. *Kentucky Finance Corporation v. Paramount Auto Exchange Corporation*, 262 U.S. 544; *Truax v. Corrigan*, 257 U.S. 312.

The record in this case shows clearly that the Petitioners came within the ambit of the Georgia First Offender's Act. As such they were entitled to all the benefits thereof. The Supreme Court of Georgia has construed the statute as follows:

“... any probationary sentence under this Act is preliminary only, and if completed without violation, permits the offender complete rehabilitation without the stigma of a felony conviction. . . .” *State v. Wiley*, 233 Ga. 316, 317.

It is undisputed that the Petitioners were forced to resign from their jobs by virtue of their having entered pleas of nolo con-

tendere to the criminal charges lodged against them. Whether or not the plea of nolo contendere constitutes a conviction is irrelevant. The First Offender's Act, by its terms, provides that the Petitioners ". . . shall not be considered to have a criminal conviction." Ga. Code Ann. § 27-2728 (see Statutory Addendum in Appendix).

The Decision of the Georgia Court of Appeals affirming the trial court flies in the face of the statute involved herein. It is precisely this type of consequence that the First Offender's Act was designed to prevent. It has been said that conviction of a crime is accepted as just cause for an employee's discharge as a matter of law. *NLRB v. Federal Bearing Company*, 109 F 2d 945 (Second Cir. 1940). However, the First Offender's Act was designed to eliminate the fact of conviction; to allow a restoration of the rights of a party as if he had never been convicted in the first place. It is irrelevant that the resignations occurred before the provisions of the First Offender's Act were invoked. Its provisions are expressly designed to be retroactive. "Such discharge shall completely exonerate the defendant of any criminal purpose, and shall not affect any civil right or liberties, and he shall not be considered to have a criminal conviction." Ga. Code Ann. § 272728 (see Statutory Addendum in Appendix).

The trial court, in granting Summary Judgment to Respondent, based its decision solely on the fact that the resignations were voluntarily. The record clearly shows the contrary. The Petitioners resignations were coerced. The Petitioners were given the opportunity of either resigning or being fired. They were given no more than a matter of minutes to make the decision and were not given an opportunity to seek counsel as to how the decision might affect their rights as against Respondent. To cast upon Petitioners the consequences of a voluntary resignation in the light of the facts herein is unconscionable and ignores even the most minimal standards of enlightened jurisprudence.

Petitioners have suffered from discriminatory administration of the law. While others similarly situated would enjoy the privileges of the First Offender's Act, Petitioners were denied those privileges by virtue of an arbitrary, capricious, unreasonable, and nonsensical ruling that their resignations were voluntary. An actual discrimination arising from the method of administering a law is as potent in creating the denial of equality of rights as discrimination made by law. *Wright v. Georgia*, 373 U.S. 284; *Rogers v. Alabama*, 192 U.S. 226; *Tarrance v. Florida*, 188 U.S. 519.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should be granted to review the decision of the Georgia Court of Appeals.

Respectfully submitted,

G. HUGHEL HARRISON
P. O. Box 88
Lawrenceville, Georgia 30246

Certificate of Service

I hereby certify that on this 24th day of April, 1978, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid to Messrs. H. Lamar Mixson, Charles M. Shaffer, Jr., and William A. Clineburg, Jr., King and Spalding, Attorneys at Law, 2500 Trust Company Tower, Atlanta, Georgia 30303, Counsel for Respondent. I further certify that all parties required to be served have been served.

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STATUTORY ADDENDUM

The pertinent sections of the Georgia Code are as follows:

§ 27-2727. Probation for First Offenders; when applicable; violation of terms of probation.

Upon a verdict or plea of guilty or a plea of nolo contendere by (sic) before an adjudication of guilt, the court may, in the case of a defendant who has not been previously convicted of a felony, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and place the defendant on probation as provided by the state wide probation act (§§ 27-2702 through 27-2726.1). Upon violation of the terms of probation, or upon a conviction for another crime, the court may enter an adjudication of guilt and proceed as otherwise provided. No person may avail himself of the provisions of this law (§§ 27-2727 through 27-2732) on more than one occasion.

§ 27-2728. Same; discharge probation are not to be considered to have criminal convictions; records of probation.

Upon fulfillment of the terms of probation, or upon release by the court prior to the termination of the period thereof, the defendant shall be discharged without court adjudication of guilt. Such discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any civil right or liberty and he shall not be considered to have a criminal conviction. Should a person be placed under probation under this law (§§ 27-2727 through 27-2732), a record of the same shall be forwarded to the office of the state probation system and to the identification division of the Federal Bureau of Investigation.

ADDENDUM

54803. Johnson et al. v. General Motors Corp. etc. W-191
Webb, Judge.

(Filed November 22, 1977)

Johnson and Williams were employed by General Motors as salaried foremen until July 15, 1975. The only employment contracts between them and General Motors respectively provided that "The employee acknowledges that his employment under this agreement is from month to month only on a calendar month basis."

In October of 1974 Johnson and Williams while in the employ of General Motors were arrested and charged with the crime of burglary. The following May they pled nolo contendere to the felony charges of receiving stolen property and each was sentenced to pay a fine of \$1000 and to serve four years on probation.

On July 15, 1975, General Motors having given each the option of resigning or being terminated, they elected to resign and thereby received all pay and benefits due them as of that date. Three months thereafter, and five months after their sentences on the felony charges, Johnson and Williams were granted by Cobb Superior Court discharges under the First Offenders Act (Code Ann. § 27-2727 et seq.).

In October 1976 they brought their complaints against General Motors seeking lost wages and reinstatement to employment alleging that they had been "wrongfully discharged" because of their arrests and sentences. They claimed that by virtue of the Georgia First Offenders' Act the criminal charges were retroactively "eradicated" as of October 29, 1975, as a consequence of which the alleged "discharges" from employment were without cause.

After the depositions of the complainants were taken, General Motors moved for summary judgment. This motion was

granted, the trial court concluding that the complainants had resigned from General Motors and had no basis for an action for wrongful discharge. From this grant of summary judgment the complainants have appealed. We affirm the judgment of the trial court.

1. Both complainants admitted that they resigned. Even if it were shown that they resigned under pressure at their employer's request, that did not amount to discharge. *Wilkinson v. Trust Co. of Georgia*, 128 Ga. App. 473, 474 (2) (197 SE2d 146) (1973).

2. In any event, even without the resignations, which were in fact given, General Motors would have been justified in terms of law to terminate the employment. It was not until three months afterwards that the provisions of the First Offenders' Act were invoked. Although the order thereunder eradicated the record of the criminal charges, discharged the appellants without any adjudication of guilt, exonerated them of any criminal purpose and intent, and asserted that no civil rights shall be affected, it could not eradicate the facts of arrest and sentencing, and it could not erase their resignation. See *Morris v. Hartsfield*, 186 Ga. 171 (197 SE 251) (1938).

We find no authority that entry of a plea of nolo contendere to a felony charge cannot be a basis for discharge by a private employer. Generally, a plea of nolo contendere stands upon the same footing as a plea of guilty. *Marshall v. State*, 128 Ga. App. 413 (1) (197 SE2d 161) (1973). Conviction of a crime is accepted as just cause for an employee's discharge as a matter of law. *NLRB v. Federal Bearing Co.*, 109 F2d 945 (2nd Cir. 1940).

Judgment affirmed. Deen, P. J., and Birdsong, J., concur.